IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1470 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LODRA DUDH UTPADAK SAHAKARI MANDALI LTD. - Petitioner(s)

Versus

PATEL KANAIYYALAL KESHAVLAL - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR DS VASAVADA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 03.10.2000 passed by the Labour Court, Kalol in reference (LCK)No. 06/1984 whereby the Labour Court has directed

the petitioner to reinstate the respondent on his original post with continuity of service and 50% backwages. The Labour Court also directed the petitioner to pay Rs. 250/- as costs to the respondent-workman.

2. The brief facts of the case are that the respondent was appointed as clerk on 20.11.1982 on temporary basis. In the meantime, the petitioner purchased a milkotester machine and therefore the services of the respondent were not required any further. As a result he was terminated on 01.07.1983. Being aggrieved by this, the respondent raised an industrial dispute which was in turn referred to the Labour Court, Kalol for adjudication. The Labour Court thereafter passed the aforesaid award.

3. Mr. R.C Jani, learned advocate for the petitioner contended that looking to his experience and the qualification, the respondent was appointed as a clerk as per the resolution dated 24.11.83 for a lumpsum payment of Rs. 200/-. However, due to the purchase of a milkotester machine, the service of the respondent was not required. Therefore, he was retrenched from service after issuance of notice dated 01.07.1983. He furhter contended that a specific contention was raised before

the Labour Court in para 8 that because of the purchase of the testing machine, the services of the respondent were not required and therefore he was relieved. However, the Labour Court without considering the fact that the respondent has not completed 240 days of service has granted reinstatement with continuity of service.

4. Mr D.S Vasavada, learned advocate for the respondent contended that the order of the Labour Court is just and proper and the same is not required to be interfered with. More particularly, in the affidavit-in-reply of the respondent it is stated that one Shri Mahendrabhai Godhabhai Patel has been appointed in place of the respondent on the designation of clerk-cum-tester.

5. I have considered the case on merits. It is true that there is no breach of Section 25F of the Act but the award of the Labour Court based on Section 25F is erroneous. No conclusion could have been arrived at by the Labour Court without any evidence on record to say that there is a breach of Section 25F of the Act. Moreover, the resolution of the petitioner states that because of the purchase of the testing machine, the services of the respondent were retrenched. Subsequently

on the same post in place of the petitioner one Shri Mahendrabhai is appointed and that fact is also not denied by the petitioner. In my view, the petitioner being a creation of statute ought to have recalled the respondent in view of the provisions of Section 25-G and H. The same has not been done. In that view of the matter, interest of justice will be served by reinstating the petitioner on his original post. The petitioner will reinstate the respondent on his original post as clerk without backwages and without continuity of service.

6. In the premises aforesaid, the petition is partly allowed. The award of the Labour Court is quashed and set aside in so far as it grants backwages and continuity of service. The petitioner is directed to reinstate the respondent on his original post within six weeks from today. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

Divya//